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November 18, 1993

**HAND DELIVERED**

Mr. William Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Ex Parte Notice - MM Docket 92-266

Dear Ms. Caton:

In accordance with Section 1.1200 et. seq. of the Commission's rules, this is to advise that on Thursday, November 18, 1993, Peter O. Price, President, of Liberty Cable Company, Inc. and Henry M. Rivera, Esq., Ginsburg, Feldman and Bress, Chartered, met with Maureen O'Connell, of Chairman Quello's office and John Hollar of Commissioner Duggan's office to discuss bulk cable rates.

The attachment to this Ex Parte Notice was used in that discussion. Two copies of the attachment are provided for you.

An original and one copy of this Ex Parte Notice was filed with the Commission. One copy was delivered to each of the above-names Commission personnel on November 18, 1993.

Sincerely,

*Henry M. Rivera*  
Henry M. Rivera

Attachment

cc: Maureen O'Connell, Esq.  
John Holler, Esq.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**LIBERTY CABLE COMPANY, INC.**

575 Madison Avenue  
New York, NY 10022  
212-891-7771

4:

**CABLE RATE REGULATION**

**MM DOCKET 92-266**

**I. FCC SHOULD NOT EXEMPT MULTIPLE DWELLING UNITS ("MDUs")  
FROM THE UNIFORM RATE REQUIREMENT.**

- ▶ SEVERAL CABLE OPERATORS HAVE ASKED THE FCC TO EXEMPT MDUs FROM THE UNIFORM RATE REQUIREMENT. THE FCC SHOULD NOT GRANT THESE REQUESTS.

- These cable operators wish to offer individually negotiated discounts to MDUs whose residents are considering switching from cable service to a competitor's service.
- The level of the discount would vary (building by building) depending on the rate offered to the MDU by the cable system's competitor.

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- ▶ LIBERTY HAS PROVIDED CLEAR EVIDENCE IN THIS PROCEEDING THAT ITS FRANCHISED CABLE COMPETITOR, TIME WARNER, HAS USED NON-UNIFORM RATES IN A PREDATORY MANNER TO PRECLUDE LIBERTY FROM EXPANDING ITS SMATV OPERATIONS AND COMPETING MEANINGFULLY WITH TIME WARNER.

- Each time Liberty has approached an MDU, hotel or institutional user to interest it in switching to Liberty's service, Time Warner has offered the MDU, hotel or institution a substantial discount, often lower than Liberty's rate.
- The lower rate is at least 25% lower than Time Warner's normal rate.
- Many hotels have been told that Time Warner will do anything it takes (i.e., lower its rate to whatever level is necessary) to keep the hotel as a customer.

- Even after the FCC adopted regulations requiring uniform rates, Time Warner has continued to market a bulk discount to MDUs in a predatory manner (i.e., only to those buildings considering switching to Liberty's service). While it is true that Time Warner mailed a notice to all applicable MDUs referencing the possibility of negotiating a bulk discount, that is different from offering a bulk discount to all applicable MDUs. In fact, Time Warner actively markets the discount only to buildings considering switching to Liberty's service.
  
- CONGRESS INTENDED THAT COMPETITION BE FOSTERED AND NURTURED AND THAT THE UNIFORM RATE REQUIREMENT PRECLUDE PREDATORY PRICING PRACTICES WHICH REDUCE THE NUMBER OF COMPETITORS.
  - The purpose of the requirement is to foster competition to cable.
  
  - Contrary to the claims made by cable operators in their petitions for reconsideration, no competition yet exists in the MDU market. For example, Liberty, which believes it is the only SMATV operator attempting to compete directly with cable, has 15,000 subscribers in MDUs in Manhattan while its competitor, Time Warner, has approximately 585,000 subscribers in MDUs.
  
  - While the cable operators state they want only to meet, not undercut, the rates offered by their competitors, the result will be to drive out competition -- exactly what Congress intended the uniform rate requirement to preclude.
  
  - Either undercutting or meeting prices of competitors would preclude competitors from gaining a foothold.

## **II. FCC SHOULD ENFORCE THE UNIFORM RATE REQUIREMENT AT THE FEDERAL LEVEL.**

- As discussed above, cable companies are attempting to evade the uniform rate requirement.
- As shown in Liberty's filings in this proceeding, local franchising authorities are not willing to enforce the uniform rate requirement.
- The FCC has authority to enforce the uniformity requirement for all regulated rates. This is different from the authority to enforce "rate levels" which is shared between the local and federal jurisdictions.

## **III. FCC NEEDS TO DO TWO THINGS.**

- Deny cable operators' requests to exempt MDUs from the uniform rate requirement. These requests were made in the cable companies' petitions for reconsideration.
- Create a federal enforcement mechanism to assure uniformity of rates.

**Liberty Cable Company, Inc.**